IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition Nos.2261 & 2262 of 2000, 3561, 26516 & 26580 of 2001 602 of 2002, 12508 of 2004, 4193 of 2006 and 440 & 12911 of 2007

Dated: 26-10-2007

Between:

The Fertilizers, Pesticides & Seeds Dealers Association,
Hyderguda, Hyderabad,
rep. by its Vice-President, N.K.C. Sekhar Rao and others.

... Petitioner

and

1. Government of India,
   Ministry of Agriculture (Department of Agriculture & Cooperation),
   rep. by its Secretary, Krishi Bhavan,
   New Delhi and others.

... Respondents

COMMON ORDER:

As the point involved in this batch of writ petitions is one and the same, these petitions are disposed of by a common order.

2. The Fertilizers, Pesticides & Seeds Dealers Association represented by its Vice President and some of the Dealers under the Insecticides Act, 1968 (for short, 'the Act') approached this Court and filed these writ petitions saying that the enhancement of licence fee from Rs.20/- to Rs.500/- per insecticide and from Rs.300/- to Rs.7,500/-

towards maximum licence fee and further requiring separate fee for different selling points and stock points of the same dealer as per the amended sub-rule (2) of Rule 10 of the Insecticides Rules, 1971 (for short, 'the Rules') issued under notification dated 20-05-1999, as arbitrary and unconstitutional and further to issue a consequential directions to the respondents not to insist upon the members of the petitioner Association and the individual Dealers not to insist upon the payment of enhanced licence fee under the amended sub-rule (2) of Rule 10 of the Rules for grant/renewal of the licence.

3. Facts, in brief, are: The trade of insecticides is controlled by the Act and the Rules made thereunder in 1971. The mandatory requirement for any individual to deal with the Act is to obtain a licence as provided for under Section 13 of the Act by making an application to the licencing officer. When once a licence is issued by a licencing officer the same is also for a period of two years and the same is renewable before the expiry of the said two years. Rule 10 of the Rules made in the year 1971 mandates that the applicants, who are desirous of becoming dealers to deal with the manufacturing, selling, storing, accepting for sale or distributing any insecticides as mentioned in the Schedule appended to the Act shall make an application for licence and thereafter they have to pay the required fee for obtaining the licence. According to sub-rule (2) of the Rule 10 of the Rules, the fee payable for grant of renewal of licence shall be Rs.20/- for every insecticide, for which the licence is applied subject to a maximum of Rs.300/-, thereafter separate fee shall be paid for each place, if any insecticides are proposed to be sold, stocked or exhibited for sale at more than one place. The members of the petitioners Association after making the applications for obtaining licence, paying the prescribed fee and obtaining required licence, as provided for under the Rules, and carrying on their business at their respective places.

The members of the Association got their licences renewed from time to time and as on the date of filing of the writ petitions their licences are renewed and they are valid up to the end of December, 1999. It appears the Government of India, Ministry of Agriculture (Department of Agriculture and Cooperation) amended the Rules vide Gazette Notification dated

20-05-1999. The said Rule i.e. sub-rule (2) of Rule 10 of the Rules, which deals with fee payable for grant of licence and renewal of licence is also amended and thus the said amount of Rs.20/- towards licence fee for every insecticide has been enhanced to Rs.500/-. By virtue of the said amendment, the members of the petitioners Association were asked to pay licence fee at the rate of Rs.500/- for every insecticide. Thereafter, it appears the first respondent – Government of India issued another Notification on 12-08-1999 by way of Corrigendum to the earlier Notification dated 20-05-1999 stating that the maximum fee payable for dealing in insecticides, shall be Rs.7,500/-. The said enhancement is questioned in this batch of writ petitions.

4. A detailed counter affidavit sworn to by the Additional PPA-cum-Director is filed on behalf of the first respondent. Of course, the other respondents have not chosen to file any counter affidavit. But it is suffice to go through the averments made in the counter affidavit filed on behalf of the first respondent, as the action of the first respondent is under challenge in this batch of writ petitions.

5. In the counter affidavit it is stated that the Act was introduced in 1968 and the first respondent for the first time under the Rule Making Power as provided for under Section 36 of the Act, made the Rules in 1971 fixing the licence fee at Rs.20/- per insecticide subject to a maximum ceiling limit of Rs.300/-. Hence, the Government of India thought it fit to constitute a Board as provided for under Section 36 of the Act and on the recommendations made by it only, the fee is enhanced from Rs.20/- to Rs.500/- per insecticide, subject to a maximum ceiling of Rs.7,500/-. It is also stated that the rupee value has increased manifold and despite the said increase, the Government has not taken steps to enhance the licence fee and the present enhancement is made only to encourage the sale of quality pesticides, keeping the interests of the farms. Further it is stated that the said enhancement made by the first respondent is strictly in accordance with the provisions of Section 36 of the Act, by constituting a Board as provided for under the said provision of law, and on the basis of the recommendations made by the said Board.

6. Heard learned counsels for petitioners and learned standing counsel for the Central Government.

7. Mr. Vedula Srinivas, learned counsel for petitioners, advancing arguments in the batch of writ petitions, mainly contended that the said enhancement is contrary to Section 36 of the Act and has drawn my attention to the said provision of law. He further contended that may be it is true that there is devaluation of the rupee, but it does not mean that the said enhancement can be excessive. According to him, the licence fee of Rs.20/- was enhanced to Rs.500/-, which means 25 times increase in the licence fee and the same is unwarranted.

8. Reiterating what is stated in the counter affidavit, learned Standing Counsel submitted that the said exercise i.e. enhancement of licence fee is strictly in accordance with the provisions of Section 36 of the Act and it cannot be said that it is manifold as the same has taken place
after 28 years of the introduction of the Rules and thus requested this Court to dismiss the batch of writ petitions.

9. Section 36 of the Act deals with power of Central Government to make rules, and as per the said provisions of law, the Central Government may, after consultation with the Board and subject to the condition of previous publication, by notification in the Official Gazette, make rules for the purpose of giving effect to the provisions of this Act. As the main thrust of Sri Vedula Srinivas, the learned counsel for the petitioners, is that there is no prior notification, this Court directed the learned Standing Counsel to ascertain the fact as to whether there is any prior publication on 08.10.2007. Despite the fact that the learned Standing Counsel was given sufficient time to ascertain the fact as to whether there is any prior publication or not, the learned Standing Counsel for the Central Government though stated that he addressed letters to the authorities, he did not receive any information. From this, it is clear that there is no prior publication as provided for under Section 36 of the Act.

10. As a result of food poisoning arising from contamination of food

with a poisonous organo-phosphorous insecticide, many persons died in the States of Kerala, Madras and other parts of the country and thus it necessitated the Government of India to appoint an Enquiry Commission to go into the aspect, in which the foodstuffs came to be contaminated and the remedial measures that are to be taken against such instances in future. On a thorough enquiry, the said Commission submitted its recommendation and the Government accepted the same. Thereafter, Inter-Ministerial Committee was appointed by the first respondent to suggest the measures to give effect to the recommendations made by the Commission and the said Committee suggested certain short-term and long-term measures. On the basis of the recommendations made by the Enquiry Commission constituted by the Government of India and the measures suggested by the Inter-Ministerial Committee, a Bill known as the Insecticides Bill,1968 was introduced in the Parliament. Thereafter by an enactment of the Parliament, "The Insecticides Act, 1968 (46 of 1968)" has come into force with effect from 02-09-1968. Section 36 of the Act empowers the Central Government to make Rules and under the said Rule Making Power, "The Insecticides Rules, 1971" were framed and they came into force on 30-10-1971.

11. It may not be necessary for this Court to deal with the various provisions of law as it is concerned with the Rule Making Power of the Central Government as provided for under Section 36 of the Act. As stated above, the said provision of law deals with the power of the Central Government to make Rules and the Central Government may after consultation with the Board and subject to the conditions of "previous publication" by Notification in the Official Gazette make Rules for the purpose of giving effect to the provisions of the Act. In the proviso to
sub-section (1) of Section 36 of the Act, it is also stated that the said consultation with the Board may be dispensed with, if the Central Government is of opinion that circumstances have arisen which render it necessary to make rules without such consultation, but in such a case,
the Board shall be consulted within six months of the making of the Rules and the Central Government shall take into consideration any suggestions which the Board may make in relation to the amendment of the said Rules.

12. From the above provisions of law it is within the power of the Central Government to make the Rules either in consultation with the Board or without consulting the Board. But, however, if the said Rules are made without consulting the Board, the Board shall be consulted within six months of the making of the Rules. In the instant case, it is not as though the Central Government unilaterally has taken the decision for enhancement of licence fee per insecticide from Rs.20/- to Rs.500/-, it is strictly adhered to Section 36 of the Act and thus constituted a Board vide Office Memorandum
No.19-3/96-PP.I, dated 13-05-1996 and the Board consisted of nine members from the Government of India and nine members from various State Governments the terms of reference is to review the existing provisions of the Act and the Rules framed thereunder and identify orders, which need modification/amendment. After thorough enquiry probe into the matter,
the Board at Item No.8 of the Agenda has thought it fit to recommend certain amendments to the Act and also to the Rules framed thereunder. However, we are concerned with sub-rule (2) of Rule of the amended Rules that came into the year 1999.

13. As per the recommendations of the Board and as there was no enhancement of licence fee for the last 28 years and no changes have been undertaken in respect of the escalation of the prices and devaluation of rupee and further as a matter of economic principle prevalent in the country and as the amount usually gets doubled after five years, the Board thought it fit to recommend for enhancement of the licence fee per insecticide from Rs.20/- to Rs.500/- subject to a maximum limit of Rs.7,500/-. Following the said recommendations only the said amendment to sub-rule (2) of Rule 10 of the Rules, were introduced in 1999. No doubt, the Government of India i.e., the first respondent has constituted a Board to probe into the matter and thus it can definitely be said to be strictly in accordance with the provisions of Section 36 of the Act. However, Section 36 of the Act mandates that the said amendment etc. shall be brought in not only in consultation with the Board but also subject to the condition of “previous publication” by Notification in the Official Gazette. The learned Counsel, Mr. Vedula Srinivas, appearing for

the petitioners, mainly laid emphasis on this aspect and submitted that the said amendment, which is proposed to sub-rule (2) of Rule of the Rules,
was never published. I find force in the said submission. Though it is stated that it is strictly adhered to Section 36 of the Act, learned Standing Counsel for the Central Government could produce any Gazette Notification establishing the fact that the same is published.

14. Further, from the facts narrated in the counter affidavit it is clear that there was never a "previous publication" of the said recommendation of the Board in the Gazette. Having said in so many words about the constitution of the Board, recommendations of the Board etc., the counter affidavit is silent about the publication of the recommendations by the Board in the Gazette Notification. From this, it is clear that the said recommendations made by the Board are not published in the Central Government Gazette prior to the said amendment. Thus it can be said that the said amendment enhancing the licence fee from Rs.20/- to Rs.500/- per insecticide is not in consonance with the said provision of law i.e. Section 36 of the Act. On this score alone,
this Court is of the view that the said amendment is liable to be set aside.

15. Further more, the legislative intent is altogether different.
The legislative intent shall be understood in the manner it is provided for. The very purpose of mandating that the said Rules shall precede "previous publication" by notification in the Official Gazette is only to see that the dealers under the Act are put on notice, so that they can ventilate their grievances before any Rules are made or amended, otherwise there is no necessity to introduce such a provision i.e. "previous publication" and the same is meaningless.

16. Definitely, the said enhancement appears to be highly excessive. Enhancing the licence fee from Rs.20/- to Rs.500/- per insecticide means it is 25 times increase, which means 2500%. As the petitioners have no opportunity to ventilate their grievances before the authorities saying that the said enhancement, is arbitrary and illegal they approached this Court and filed the present writ petitions. At the cost of repetition it is stated that if the Government of India published the

recommendations of the Board in the Official Gazette, as provided for under Section 36 of the Act probably the petitioners would have approached the authorities and would have been in a position to state as to how the same is arbitrary and excessive. As the petitioners do not have such an opportunity, this Court is of the view that the petitioners can as well approach the authorities to ventilate their grievances. In **SECUNDERABAD HYDERABAD HOTEL OWNERS' ASSN. v. HYDERABAD MUNICIPAL CORPN.**[1], similar issue came up for debate;

the Supreme Court dismissed the SLP in the light of the facts and circumstances of the said case. In the said case, the Municipal Corporation of Hyderabad invoking the provisions conferred under Section 622(2) of the Hyderabad Municipal Corporation Act, 1955 enhanced the licence fee where the monthly rent was up to Rs.50/- was increased to Rs.100/- and the maximum licence fee where the rent was above Rs.1,500/- but not more than Rs.2,000/-, was increased to Rs.2,000/-. In respect of lodging houses,

the maximum licence fee where the rent was above Rs.4,000/- but not more than Rs.5,000/-, was fixed at Rs.5,000/-. Similarly, the licence fee was proportionately increased in respect of all categories of lodging houses and eating-houses by the said order. In the said cases before enhancing the said rent, the Municipal Corporation had meetings and detailed negotiations with the various trade organizations connected with the conducting of

eating-houses and lodging-houses and ultimately it is thought it fit to enhance the licence fee. The proceedings also recorded that the traders viewed the increase from the existing rates as on the high side and the increase in many cases was four to five times the existing rates. But it appears the traders formed a Twin Cities Traders' Joint Action Committee and made representations at various levels and Joint Meetings were held and after a great deal of exchange of views it was unilaterally resolved to increase the trade licence fee by.100% over the rates prevailing prior to the increase in October, 1991 and thus an agreement was reached to the said effect.

17. Taking those facts into consideration the Supreme Court observed

that enhancement by 100% that too with the consent of the members cannot be said to be arbitrary or illegal. Such an exercise has not taken place in the instant case. Hence, this Court is of the view that the amendment brought to sub-rule (2) of Rule 10 of the Insecticides Rules, 1999 enhancing the licence fee from Rs.20/- to Rs.500/- subject to a maximum ceiling of Rs.7,500/- is arbitrary, illegal and contrary to Section 36 of the Act and is thus liable to be set aside.

18. Accordingly, these writ petitions are allowed and sub-rule (2) of Rule 10 of the Insecticides Rules, 1999 is hereby set aside and the respondents are hereby directed to strictly adhere to Section 36 of the Act i.e., publishing the Board recommendations and the view of the Central Government by Notification in the Official Gazette, so that the dealers under the Act may give representations and after considering the same, the Central Government may pass appropriate orders in accordance with law i.e. bringing the amendment to Section 10(2) of the Rules etc.

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JUSTICE GOPALAKRISHNA TAMADA

Dt.26-10-2007
Note: LR copy to be marked.
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[1] (1999) 2 Supreme Court Cases 274